



COMMONWEALTH OF MASSACHUSETTS  
**Board of Registration  
of  
Hazardous Waste Site Cleanup Professionals**

**MINUTES  
of  
BOARD MEETING**

Held on  
**April 18, 2007**

Meeting Location: Department of Environmental Protection  
Central Regional Office  
627 Main Street  
Worcester, Mass.

Prepared by: A. Fierce

[Approved as amended, May 23, 2007]

1. **Call to Order:** Acting Chairperson Janine Commerford called the meeting to order at 4:14 p.m. The other Board members present were Gail Batchelder, Kirk Franklin, Gretchen Latowsky, Robert Luhrs, Paul Mullen, Debbie Phillips, Kelley Race, and Debra Stake. Board members Christophe Henry and Deborah Farnsworth were absent. The LSP Board staff members present were Allan Fierce, Terry Wood, Lynn Read, Jan Reitsma, Brian Quinlan, and Al Wyman. Also present was Wes Stimpson, the Interim Executive Director of the LSP Association.
2. **Announcements:** There were no announcements.
3. **Agenda:** The Board agreed to add "Reports from Previous Quasi-judicial Sessions" to the draft Agenda, inserting it after the review of the previous meeting's minutes.
4. **Minutes:** The Board reviewed the draft minutes for the meeting of the Board held on March 5, 2007. **A motion was made and seconded to approve the minutes as drafted. The motion was approved unanimously.**
5. **Reports from Previous Quasi-judicial Sessions:** Ms. Commerford requested and received unanimous consent to publish in the minutes of this meeting the following four reports from previous quasi-judicial sessions.

**Dismissal of Complaint 04C-02(a)**

At a quasi-judicial session held on March 5, 2007, the members of the Complaint Review Team ("CRT") for Complaint 04C-02(a) (Mr. Franklin, Ms. Race, and Ms. Read) presented their report summarizing the findings of their preliminary investigation of this Complaint. During this presentation, the LSP's name was not disclosed.

The following seven non-recused members of the Board were also present and participated in this quasi-judicial session: Ms. Batchelder, Ms. Farnsworth, Mr. Henry, Ms. Latowsky, Mr. Luhrs, Ms. Phillips, and Ms. Stake. Ms. Commerford and Mr. Mullen were absent.

The members of the CRT explained that this LSP was one of five LSPs named in Complaint 04C-02, filed by MassDEP. The release at issue was at a gas station site, and the release had impacted a residential drinking water well. MassDEP had imposed IRA conditions regarding the drinking water at the residence. These conditions included, among others, that the residence be connected permanently to town water. The Complaint alleged, *inter alia*, that the five LSPs had made misleading statements in submissions to MassDEP regarding whether these IRA conditions had been met.

At the conclusion of the CRT's presentation, the CRT members left the room. The seven remaining Board members then discussed the report. At the conclusion of the discussion, a motion was made and seconded that (1) based on the preliminary investigation, sufficient grounds do not exist to take disciplinary action against this LSP and (2) the Complaint should be dismissed. The motion was approved by a unanimous vote of 7-0.

A dismissal letter was subsequently signed and mailed to the LSP.

Now that this Complaint has been dismissed, the LSP's name, Patrick Vargo, can be made public.

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**Administrative Consent Order re: Complaint 04C-02(b)**

At a quasi-judicial session held on March 5, 2007, the members of the CRT for Complaint 04C-02(b) (Mr. Franklin, Ms. Race, and Ms. Read) presented a proposed agreement for discipline with the Respondent.

The following seven non-recused members of the Board were also present and participated in this quasi-judicial session: Ms. Batchelder, Ms. Farnsworth, Mr. Henry, Ms. Latowsky, Mr. Luhrs, Ms. Phillips, and Ms. Stake. Ms. Commerford and Mr. Mullen were absent.

The members of the CRT explained that this LSP was one of five LSPs named in Complaint 04C-02, filed by MassDEP. The release at issue was at a gas station site, and the release had impacted a residential drinking water well. MassDEP had imposed IRA conditions regarding the drinking water at the residence. These conditions included, among others, that the residence be connected permanently to town water. The Complaint alleged, *inter alia*, that the five LSPs had

made misleading statements in submissions to MassDEP regarding whether these IRA conditions had been met.

The CRT members said that they had not yet fully concluded their investigation or drafted a CRT report regarding the Respondent LSP for 04C-02(b). But they had substantially completed their investigation, they said, and had formed enough of an opinion to join with the Respondent in presenting a joint, proposed agreement for discipline for the Board's review and approval.

In the absence of a full CRT report, the CRT members presented a preliminary investigative memorandum that explained both (a) the allegations presented by the Complaint at a single site; (b) the possible violations of the Board's Rules of Professional Conduct that could not be ruled out by the substantial investigation conducted to date; and (c) mitigating and aggravating factors. The Respondent's name was redacted in their memorandum and not revealed during the quasi-judicial session.

In the course of presenting their preliminary investigative results, the CRT noted that this Respondent voluntarily withdrew from the profession and surrendered his LSP license on March 1, 2006. He is currently not an LSP, although he remained eligible to reapply at any time.

The CRT members explained that, although they had yet to conclude their investigation or prepare a CRT report, their investigation had revealed what they believed were sufficient grounds to support the resolution of this Complaint in a particular manner, which they described.

After answering questions about their investigation to date and proposed resolution, the CRT members were recused and left the room.

The Board discussed the proposed agreement for discipline. At the conclusion of the discussion, the Board members present unanimously rejected the terms of the proposed agreement. Instead, they agreed unanimously to a set of alternative minimum terms for any Administrative Consent Order ("ACO") with this Respondent. In the event that the Respondent was unwilling to enter into an ACO on these alternative terms, the Board directed the CRT to conclude its investigation and present a CRT report to them as soon as possible.

Thereafter, on March 20, 2007, the Board and the Respondent entered into an ACO that met the minimum terms established by the Board. In this ACO, the Respondent agreed not to reapply for an LSP license at any time thereafter.

Now that this Complaint has been resolved, the Respondent's name, John Balco, can be made public.

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#### **Dismissal of Complaint 04C-02(c)**

At a quasi-judicial session held on January 22, 2007, the members of the Complaint Review Team ("CRT") for Complaint 04C-02(c) (Mr. Franklin, Ms. Race, and Ms. Read) presented their

report summarizing the findings of their preliminary investigation. During this presentation, the LSP's name was not disclosed.

The following five non-recused members of the Board were also present and participated in this quasi-judicial session: Ms. Batchelder, Ms. Commerford, Ms. Farnsworth, Mr. Luhrs, and Ms. Phillips. Mr. Henry, Ms. Latowsky, Mr. Mullen, and Ms. Stake were absent.

The members of the CRT explained that this LSP was one of five LSPs named in Complaint 04C-02, filed by MassDEP. The release at issue was at a gas station site, and the release had impacted a residential drinking water well. MassDEP had imposed IRA conditions regarding the drinking water at the residence. These conditions included, among others, (a) that the residents be provided with bottled water and (b) that their residence be connected permanently to town water or that a carbon filter system be installed for the well water. The Complaint alleged, *inter alia*, that the five LSPs had made misleading statements in submissions to MassDEP regarding whether these IRA conditions had been met.

At the conclusion of the CRT's presentation, the CRT members left the room. The five remaining Board members then discussed the report. At the conclusion of discussion, **a motion was made and seconded that (1) based on the preliminary investigation, sufficient grounds do not exist to take disciplinary action against this LSP and (2) the Complaint should be dismissed with a warning. The motion was approved by a unanimous vote of 5-0.**

The CRT's attorney was directed to draft a draft dismissal letter with a warning for review by the Board at the next quasi-judicial session.

At a quasi-judicial session of the Board on March 5, 2007, the seven non-recused Board members present (Ms. Batchelder, Ms. Farnsworth, Mr. Henry, Ms. Latowsky, Mr. Luhrs, Ms. Phillips, and Ms. Stake.) reviewed and unanimously approved the draft dismissal letter with a warning. Ms. Commerford and Mr. Mullen were absent.

The dismissal letter with a warning was subsequently signed and mailed to the LSP.

Now that this Complaint has been dismissed, the LSP's name, Brian Emery, can be made public.

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#### **Dismissal of Complaint 04C-02(e)**

At a quasi-judicial session held on March 5, 2007, the members of the Complaint Review Team ("CRT") for Complaint 04C-02(e) (Mr. Franklin, Ms. Race, and Ms. Read) presented their report summarizing the findings of their preliminary investigation of this Complaint. During this presentation, the LSP's name was not disclosed.

The following seven non-recused members of the Board were also present and participated in this quasi-judicial session: Ms. Batchelder, Ms. Farnsworth, Mr. Henry, Ms. Latowsky, Mr. Luhrs, Ms. Phillips, and Ms. Stake. Ms. Commerford and Mr. Mullen were absent.

The members of the CRT explained that this LSP was one of five LSPs named in Complaint 04C-02, filed by MassDEP. The release at issue was at a gas station site, and the release had impacted a residential drinking water well. MassDEP had imposed IRA conditions regarding the drinking water at the residence. These conditions included, among others, (a) that the residents be provided with bottled water and (b) that their residence be connected permanently to town water or that a carbon filter system be installed for the well water. The Complaint alleged, *inter alia*, that the five LSPs had made misleading statements in submissions to MassDEP regarding whether these IRA conditions had been met.

At the conclusion of the CRT's presentation, the CRT members left the room. The seven remaining Board members then discussed the CRT's report. At the conclusion of discussion, **a motion was made and seconded that (1) based on the CRT's report of its preliminary investigation, sufficient grounds do not exist to take disciplinary action against this LSP, and (2) the Complaint should be dismissed. The motion was approved by a unanimous vote of 7-0.**

A dismissal letter was subsequently signed and mailed to the LSP.

Now that this Complaint has been dismissed, the LSP's name, Reginald Achilles, can be made public.

6. **Decisions Regarding License Applicants:** The staff presented the following Application Dockets:

<u>Docket No. 1:</u> The applicant's name, company name, application number, and Application Review Panel recommendation were read into the record:				
			<u>ARP</u>	<u>REC.</u>
Alan P. Desrosiers	Response Environmental	#8205	199	D

Ms. Latowsky, Mr. Mullen, and Ms. Phillips were recused and left the room.

**A motion was made and seconded that the recommendation from ARP #199 be accepted, i.e., that the application submitted by Mr. Desrosiers be denied for the reasons stated in the draft denial letter and that he be found ineligible to take an exam. The motion was approved unanimously.**

Ms. Latowsky, Mr. Mullen, and Ms. Phillips returned and rejoined the meeting.

<u>Docket No. 2:</u> The applicant's name, company name, application number, and Application Review Panel recommendation were read into the record:				
			<u>ARP</u>	<u>REC.</u>
Derek J. Tomka	New England Gas Co.	#3972	201	A

No members were recused.

**A motion was made and seconded that the recommendation from ARP #201 be accepted, i.e., that the application submitted by Mr. Tomka be accepted and that he be found eligible to take an exam. The motion was approved unanimously.**

7. **License Renewal Applications:** The staff presented the following License Renewal Dockets:

**Renewal Docket #1**

Renewal Date: April 30, 2007  
Have met all requirements for renewal.  
New Renewal Date: April 30, 2010

- |                         |       |
|-------------------------|-------|
| 1. Lento, Kenneth E.    | #5877 |
| 2. O'Brien, Jonathan R. | #4562 |
| 3. Richards, Peter      | #4410 |
| 4. Sullivan, David      | #1488 |

**Renewal Docket #2**

Renewal Date: January 30, 2007  
Granted a 90-day extension.  
Has now met all requirements for renewal  
New Renewal Date: January 30, 2010

- |                 |       |
|-----------------|-------|
| 1. Eby, Richard | #7782 |
|-----------------|-------|

**Renewal Docket #3**

Renewal Date: October 30, 2006  
Granted a 90-day extension.  
Granted a waiver further extending deadline.  
Has now met all requirements for renewal.

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|-----------------------|-------|
| 1. Kearney, Edward K. | #3717 |
|-----------------------|-------|

**A motion was made and seconded to renew the licenses of the LSPs on Renewal Dockets #1, #2, and #3 for a three-year period ending on the dates indicated. The motion was approved unanimously.**

8. **Other Licensing-Related Matters:**

**A. New Panel Assignments and Scheduling.** Mr. Quinlan sought and obtained volunteers for Application Review Panel #202 (Ms. Commerford, Mr. Luhrs, and Mr. Mullen).

**B. Appeal Review Panel for Gilchrist Appeal.** The Board agreed to move this agenda item to later in the meeting.

**C. Appeals Status Report.** Ms. Read reported that Peter DeChaves has voluntarily dropped his appeal of the denial of his license application.

**D. Inactive Status Report.**

1. Returned to Active Status: The staff reported that the following Inactive LSP has resumed Active Status:

- Philip Marshall (#2868) on 3/29/07

2. Placed on Inactive Status: The staff reported that the following LSPs were placed on Inactive Status at their request:

- Philippe Dubreuilh (#5529) at c.o.b. on 4/1/07
- Charles Head (#9665) at c.o.b. on 4/6/07

**9. Examinations:**

**A. New Licensees.** Mr. Fierce reported that the following approved applicants passed the licensing exam administered on April 4, 2007, and are now LSPs:

<u>Name</u>	<u>Licensure Date</u>	<u>Lic. No.</u>
David B. Sherman	4/6/07	#8904
Valerie Watanabe	4/6/07	#6272

Mr. Fierce noted that the total number of Active LSPs as of this date was 558.

**B. Next LSP Exam.** Mr. Fierce reported that the next licensing exam has yet to be scheduled but would likely be administered in the second half of May.

**C. LSP Exam Update Project.** Mr. Fierce reported that the Board has received two responses to its Request For Responses For Psychometric Services. The psychometrician to be retained would assist the Board in designing and running a cut-score workshop for the Board's updated exams. Ms. Commerford has appointed a three-member team to evaluate the two responses: Ms. Batchelder, Mr. Fierce, and Carolyn Levinson, a contract specialist who works for BWSC.

**10. Continuing Education Committee Report:**

**A. Course Approval Requests.** Mr. Wyman reported that the Committee had met earlier in the day and had voted to make the following course and conference recommendations to the full Board:

Sponsor: EBI

Course Title: *Aquifer Testing*

Credits Requested: 8 Technical credits

Committee Recommendation: **Approve for 8 Technical credits.**

Sponsor: Bowditch & Dewey, LLP

Course Title: *Environmental Law for the Licensed Site Professional*

Credits Requested: 2 Regulatory credits

Committee Recommendation: **Approve for 2 Regulatory credits.**

Sponsor: Environmental Professionals' Organization of Connecticut

Course Title: *Aquifer Test Analysis in Fractured Rock with Emphasis on Nonstandard Approaches and Interpretations*

Credits Requested: 8 Technical credits

Committee Recommendation: **Approve for 8 Technical credits.**

Sponsor: National Association of Local Government Environmental Professionals

Course Title: *Massachusetts Brownfields Workshop*

Credits Requested: Not specified

Committee Recommendation: **Deny.** The Committee members agreed that the Workshop did not focus upon regulatory requirements applicable to the provision of Professional Services nor did it include sufficient content that was "reasonably likely to maintain or enhance the licensee's ability to competently perform, supervise and/or coordinate the scientific and/or technical components of response actions (*i.e.*, assessments, containments and/or removals) in Massachusetts," as required by 309 CMR 3.09 (1), the definition of "Technical."

Sponsor: MassDEP

Course Title: *A Different Path Through the Massachusetts Contingency Plan, 2007*

Credits Requested: 4 DEP Course/Regulatory credits

Committee Recommendation: **Approve for 4 DEP Course/Regulatory credits.**

Sponsor: LSP Association

Course Title: *Slug Test Field Course*

Credits Requested: 8 Technical credits

Committee Recommendation: **Approve for 8 Technical credits.**



Requestor: LSP Stewart Moutain

Sponsor: Battelle

Conference Title: The Ninth International In Situ and On-Site Bioremediation Symposium (May 7, 2007; Baltimore, Md.)

Credits Requested: Conference credit (50%)/Technical

Committee Recommendation: **Approve for Conference credit/Technical**

Sponsor: MassDEP

Course Title: eDEP Demonstration (a 1-hour presentation at a meeting of the Western Mass. Chapter of the LSP Association; April 17, 2007)

Credits Requested: 1 DEP Course/Regulatory credit

Committee Recommendation: **Approve for 1 DEP Course/Regulatory credit.**

Sponsor: LSP Association

Course Title: Overview of Vapor Intrusion and Mitigation Issues for LSPs

Credits Requested: 4 Technical credits

Committee Recommendation: **Approve for 4 Technical credits.**

**A motion was made and seconded to accept the Committee's recommendations. The motion was approved unanimously.**

#### **B. Waiver Requests.**

1. Richard Hughto – Ms. Stake was recused and left the room. The Committee reminded the Board that at the January 2007 Board meeting the Board had tabled the Committee's recommendation to deny Richard Hughto's waiver request, which would have extended his license renewal date and allowed him additional time to obtain the credits he needs to renew his license. The Board tabled this request because only 5 non-recused Board members were present. (Pursuant to the Board's waiver regulation, 309 CMR 2.12, the affirmative vote of at least a majority of the Board -- six members -- is required to approve or deny a waiver request.) The Committee reminded the Board of the bases Mr. Hughto offered for his request. (These bases are described in the minutes of the Board's meeting held on January 22, 2007.) The Committee's recommendation was that the Board should deny Mr. Hughto's waiver request for failing to present sufficient "good cause" to extend his license renewal date beyond the 90-day extension that he had been granted.

**A motion was made and seconded to accept the Committee's recommendation to deny Mr. Hughto's waiver request. The eight Board members present approved the motion unanimously.**

Ms. Stake returned and rejoined the meeting.

2. Cedwyn Morgan -- The Committee reported that it had reviewed an e-mail letter from LSP Cedwyn Morgan requesting that the Board grant a waiver of its "*pro rata*" rule and allow him to receive a full 8 continuing education credits for the Environmental Forensics course he took in Marlborough on February 15, 2007. In his request, Mr. Morgan explained that a blizzard struck the area on the day before the event, with his hometown of Ashby receiving about a foot of snow. Although he allowed himself extra time to drive to Marlborough on the day of the training, he arrived late "due to heavy traffic and congestion." At the end of the day, based on the Board's "*pro rata*" rule, the course sponsor (LSPA) awarded him 7.4 rather than the full 8 credits.

Mr. Morgan's letter appears to offer four reasons why the Board should approve his request to receive the full 8 credits:

1. Circumstances beyond his control, i.e., the snowstorm and traffic congestion.
2. He arrived during the introductory section of the training before the substantive presentations began. He was present for all substantive portions of the course.
3. Hardship, described as follows: "From an educational credit standpoint, 7.4 credits are very similar to 0 credits because both require you to take another class to achieve the required number of credits."
4. Mitigating circumstances, in that when he arrived late and learned he would not receive full credit, he asked the LSPA representatives present whether he could forego the course that day and "transfer my tuition payment to another future class for which I would receive full credit." He would have done this, he claims, but the LSPA representatives "told me that they could not provide an answer," so he entered the training room and attended for the rest of the day.

Mr. Morgan's LSP license renewal date is January 30, 2008.

The Committee reported that it had discussed all four of these reasons offered by Mr. Morgan.

As to #1, most Committee members agreed that since other attendees had arrived on time, the circumstances must not have been entirely beyond Mr. Morgan's control in that if he had simply left a little earlier he would have arrived on time. In any event, heavy traffic and congestion is just too frequent an occurrence in eastern and central Massachusetts; it could be used to justify almost any late arrival to any course. Other members thought that the heavy snow in north central Massachusetts the day before did give Mr. Morgan a more than typical traffic excuse and that this should be viewed as sufficient "good cause" to justify granting the waiver requested.

As to #2 (missing no substantive presentations), some Committee members agreed that, if permitted, this excuse could be used at most training events when LSPs miss

the first 30 to 40 minutes, and they did not want to set this precedent, which could undercut the emphasis in the Board's regulations regarding arriving on time.

As to #3 (7.4 credits is similar to 0 credits), most Committee members found this reasoning to be unpersuasive, because there are a number of occasions each year when an LSP can earn 1 to 4 technical credits. It just is not the case that 7.4 credits is "similar" to 0 credits.

Finally, as to #4, most members agreed that given the scheduling difficulties the LSPA already has, it is not reasonable to fault them for declining to allow every late arriving LSP to forego attending the training on a money-back or tuition-transfer basis. For this reason, the fact that the LSPA did not do this here does not add "good cause" to Mr. Morgan's request.

The Committee reported that at the conclusion of its discussion, the Committee members present, by a vote of 5-3, voted to recommend that the Board deny Mr. Morgan's request.

The Board discussed the Committee's recommendation. At the conclusion of the discussion, **a motion was made and seconded to accept the Committee's recommendation to deny Mr. Morgan's waiver request. The motion was approved unanimously.**

11. **Professional Conduct Committee:** Since all the Board members present at this meeting were also present at the Professional Conduct Committee meeting held earlier in the day, the Board agreed to forego a committee report.

12. **Personnel, Budget, and Fees:**

- A. Personnel Report.** Mr. Fierce reported that the hiring process to replace Ms. Hartley remains on hold. This process was interrupted in mid-January by the imposition of hiring restrictions on state agencies.

Mr. Fierce further reported that the Board's remaining staff members have divvied up some of Ms. Hartley's former responsibilities, and this work is continuing to divert the staff to some extent from their disciplinary work.

- B. FY-08 Budget.** Mr. Fierce reported that the House Ways & Means Committee had released its proposed budget for FY-08, and it contained the same number for the LSP Board that was in the Governor's budget recommendation for the next fiscal year, namely \$377,680. This amount is about \$7500 more than the Board received in FY-07. The state budget now moves to the full House. After that, the budget goes to Senate Ways & Means Committee and then to the full Senate.

- C. **Fees.** Mr. Fierce reported that in the absence of Ms. Hartley or her replacement, the staff is unable to conduct its annual audit of LSP Annual Fee payments to determine who has paid and who has not. Staff is continuing to collect all Application Fees, Exam Fees, Renewal Fees, and fees for all public records requests.
13. **Status of Board Member Replacements by Governor:** Ms. Commerford reported that she has received no information regarding the status of the memo sent to EOEEA recommending certain individuals for appointment to the Board.
14. **Status of Proposed Legislation Affecting 21E Program:** Ms. Commerford reported that at a recent legislative hearing MassDEP had testified in opposition to Senate Bill 134, which if passed would expand the liability relief offered under Section 5C of Chapter 21E. The Committee that conducted the hearing, the Joint Committee on Community Development and Small Business, has yet to take action on the Bill. EOEEA is coordinating the administration's response to the Bill, Ms. Commerford said.
15. **Next Article for LSPA News:** Mr. Fierce reported that the staff recently submitted an article to the LSPA that summarized the resolution of 02C-08. The next deadline for submission of articles is on or about June 6, 2007. Mr. Fierce said that by then the staff expects to have a recently closed disciplinary case to use as a topic for that article.
16. **Scheduling of Next Meetings:** The Board agreed to hold its next meeting on Wednesday, May 23, 2007, at NERO. The June meeting will be held on Wednesday, June 20, 2007, at a location to be determined.
- [At this point in the meeting, the Board took a 10-minute break. During this break, Ms. Phillips left the meeting and did not return.]
17. **Appeal Review Panel for Gilchrist Appeal:** At the Board meeting a month ago, the Board appointed an Appeal Review Panel (Ms. Farnsworth, Ms. Latowsky, and Ms. Race, assisted by Ms. Wood) to review the application appeal papers filed by Cynthia Gilchrist. Ms. Wood reported that two members of the Panel had met earlier in the day (Ms. Farnsworth was absent) and reviewed Ms. Gilchrist's application, denial decision letter, and appeal papers. Having done so, these two Panel members (a majority) agreed that they had not identified any concerns that would warrant reconsidering the Board's initial denial decision. As a result, they recommended that the Board take no action and allow the appeal to proceed at DALA.
18. **Adjournment:** The meeting was adjourned at 4:45 p.m.